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4310-VH-P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

43 CFR Part 2

[Docket ID: BSEE-2016-0001]

167E1700D2 EEAA010000 ET1EX0000.SZH000

RIN 1014-AA29

Privacy Act Regulations; Exemption for the Investigations Case Management System

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior is amending its regulations to exempt certain records in the Investigations Case Management System from one or more provisions of the Privacy Act because of civil and administrative law enforcement requirements.

DATES: Submit written comments on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this proposed rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1014-AA29 as an identifier in your comments. BSEE may post all submitted comments, in their entirety, at: www.regulations.gov.

1. Federal eRulemaking Portal: www.regulations.gov. In the search box, enter “BSEE-2016-0001,” then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking.

2. Mail or hand-carry comments to the Department of the Interior (DOI); Bureau of Safety and Environmental Enforcement; ATTN: Regulations and Standards Branch; 45600 Woodland Road, Mail Code VAE-ORP; Sterling, VA 20166. Please reference “Privacy Act Exemptions for the Investigations Case Management System, 1014-AA29,” in your comments and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Rowena Dufford, Bureau of Safety and Environmental Enforcement Privacy Act Officer, 45600 Woodland Road, Mail Stop VAE-MSD, Sterling, VA 20166. E-mail at *Rowena.Dufford@bsee.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to records about individuals that are maintained in a “system of records.” A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

An individual may request access to records containing information about him or herself, 5 U.S.C. 552a(b), (c) and (d). However, the Privacy Act authorizes Federal

agencies to exempt systems of records from access by individuals under certain circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation, 5 U.S.C. 552a(k).

The Department of the Interior (DOI) Bureau of Safety and Environmental Enforcement (BSEE) created the “Investigations Case Management System (CMS), BSEE-01”, system of records to enable BSEE to conduct and document civil administrative investigations related to incidents, operations of the Outer Continental Shelf (OCS), and employee misconduct investigations. The CMS will store, track, and analyze reportable injuries, the loss or damage of property, possible violations of Federal laws and regulations, and investigation information related to operations on the OCS to identify safety concerns or environmental risks. The CMS will contain investigatory materials related to possible criminal activity and referrals to internal and external law enforcement organizations as appropriate for investigation.

Incident and non-incident data related to activity occurring on the OCS collected in support of investigations, regulatory enforcement, homeland security, and security (physical, personnel, stability, environmental, and industrial) activities may include data documenting investigation activities, enforcement recommendations, recommendation results, property damage, injuries, fatalities, and analytical or statistical reports. The CMS will also provide information for BSEE management to make informed decisions on recommendations for enforcement, civil penalties, and other administrative actions.

In this notice of proposed rulemaking, DOI is proposing to exempt portions of the

CMS system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) because of civil and administrative law enforcement requirements. Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is “investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).”

Because this system of records contains investigative matters compiled for law enforcement purposes under the provisions of 5 U.S.C. 552a(k)(2), the Department of the Interior plans to exempt portions of the CMS system of records from one or more of the following provisions: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

Where a release would not interfere with or adversely affect investigations or enforcement activities, including but not limited to revealing sensitive information or compromising confidential sources, the exemption may be waived on a case-by-case basis. Exemptions from these particular subsections are justified for the following reasons:

1. 5 U.S.C. 552a(c)(3). This section requires an agency to make the accounting of each disclosure of records required by the Privacy Act available to the individual named in the record upon request. Release of accounting of disclosures would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation; and lead

to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

2. 5 U.S.C. 552(d); (e)(4)(G) and (e)(4)(H); and (f). These sections require an agency to provide notice and disclosure to individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. Granting access to records in the CMS system of records could inform the subject of an investigation of the existence of that investigation, the nature and scope of the information and evidence obtained, the identity of confidential sources, witnesses, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; and disclose investigative techniques and procedures.

3. 5 U.S.C. 552a(e)(1). This section requires the agency to maintain information about an individual only to the extent that such information is relevant or necessary. The application of this provision could impair investigations and civil or administrative law enforcement, because it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. Furthermore, during the course of the investigation, an investigator may obtain information concerning the violation of laws outside the scope of the investigator's jurisdiction. BSEE investigators will refer information obtained outside of their civil or administrative jurisdictions to the appropriate agency.

4. 5 U.S.C. 552a(e)(4)(I). This section requires an agency to provide public notice of the categories of sources of records in the system. The application of this section could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal. This could compromise BSEE's ability to conduct investigations and to identify and detect violators.

Procedural Requirements

1. Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. DOI developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act.

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

5. Takings (E.O. 12630).

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132).

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system.
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation with Indian Tribes (E.O. 13175).

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes.

9. Paperwork Reduction Act.

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act (NEPA) of 1969.

This rule does not constitute a major Federal Action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule meets the criteria set forth in 43 CFR 46.210(i), 516 Departmental Manual 15.4C(1), and the BSEE Interim NEPA Policy Document 2013-09, for a categorical exclusion. The rule's administrative effects are to exempt CMS from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) because of civil and administrative law enforcement requirements and therefore would not have any environmental impacts. BSEE also analyzed this proposed rule to determine if it involves any of the extraordinary circumstances set forth in 43 CFR 46.215 that would require an environmental assessment or an environmental impact statement for actions otherwise eligible for a categorical exclusion. BSEE concluded that this rule does not meet any of the criteria for extraordinary circumstances.

11. Data Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

12. Effects on Energy Supply (E.O. 13211).

This rule is not a significant energy action under the definition in Executive Order 13211, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. A Statement of Energy Effects is not required.

13. Clarity of this Regulation.

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (H.R. 946), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

List of Subjects in 43 CFR part 2: Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

Dated: September 7, 2016

Signed: _____

Kristen J. Sarri

Principal Deputy Assistant Secretary for Policy, Management and Budget

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR part 2 as follows:

PART 2 - - FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

2. Amend § 2.254 to add paragraph (b)(18) to read as follows:

§ 2.254 - Exemptions.

* * * * *

(b) * * *

(18) Investigations Case Management System (CMS), BSEE-01.

[FR Doc. 2016-23707 Filed: 9/29/2016 8:45 am; Publication Date: 9/30/2016]